



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 12 OF 2018**

**ABDI UMAR NOOR.....PLAINTIFF**

**VERSUS**

**ADAN MAMO ELEMA AND 22 OTHERS.....RESPONDENTS**

**COUNTY GOVERNMENT OF ISIOLO.....INTERESTED PARTY**

**RULING**

1. This ruling is in respect of an application dated 13<sup>th</sup> April 2018 whereby the applicant is seeking for transfer of Isiolo CMCC no. 51 of 2013 from the chief magistrate's court at Isiolo to the ELC court at Meru.

2. The main ground in support of this application is that the land is valued at the sum of Kshs.52,800,000 which is way above the pecuniary jurisdiction of the Chief magistrate's court. The applicant has also filed a supporting affidavit detailing the circumstances under which this application is made. The application has been opposed via the grounds of opposition filed on 2<sup>nd</sup> May 2018. This application was argued orally on 23.7.2018.

**Arguments for the applicant**

3. The applicant avers that on 2013 when the case was filed before Isiolo Law court, the suit land was valued at Kshs.7,000,000. The value of the property increased thereafter, after developments were carried out on the property whereby there are now five permanent houses on the land. The applicant took steps to have the property valued whereby a valuation report to that effect was compiled on 5.4.2018 indicating that the land is now worth 52,800,000. The suit property according to the applicant is title no. ISIOLO TOWNSHIP BLOCK 2/11.

**Arguments for the respondents**

4. The respondents avers that the application is misconceived, bad in law, untenable and an abuse of the court process. The respondents avers that the subject matter before the lower court and the high court is different. He avers that before the lower court the land is referred to as parcel no. 11 situated at Chechele in Isiolo County whereas before this court the property is being referred to as Title no. ISIOLO TOWNSHIP BLOCK 2/11.

5. The respondents also aver that no valuation was undertaken when the suit was filed before the magistrate's court. As regards the current value of the property respondents aver that they were not even aware that the applicants had undertaken the process of valuing the suit property. They aver that such a report ought to have been filed before the lower court so as to inform that court that it no longer had jurisdiction to hear the case. That way if the applicants were to be aggrieved by the decision of the lower court they would file an appeal before this court.

6. Respondents also state that the issue at hand ought to be determined before the trial court. Respondents allege that the trial was in progress before the chief magistrate when they objected to the manner in which the title documents are being produced before the lower court. That is when the applicants decided to come before this court, before the lower court could make a determination regarding the production of the documents. To that end the respondents aver that this court should not be used to sanitize an illegality.

**Determination**

7. The issue at hand is the pecuniary jurisdiction of the trial court to handle the case before it. The jurisdiction is provided for under **section 7 of the Magistrates court's act** where it is stipulated that **"A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed— ..... twenty million shillings, where the court is presided over by a chief magistrate"**.

8. The case in Isiolo was filed in 2013 and the trial is midstream. The question is at what point did the Applicant discover that the property, the subject matter of the court is worth over 20 million?. After all, applicant has not denied the averments made by the Respondent that this application was filed after an issue had arisen before the trial magistrate regarding production of documents and the determination of the said issue has now been put on hold because of this application.

9. The application dated 13<sup>th</sup> April 2018 is anchored on the basis of the valuation report dated 5<sup>th</sup> April, 2018. This means that the applicant took a unilateral decision to change the course of the trial knowing well that the hearing was midstream. They did not inform the court and the rival party. I therefore find that the application has not been made in good faith as applicant is guilty of material non-disclosure. In the case of **Priscilla Ndubi and another versus Gerishon Gatobu Meru Succession cause no 720 of 2013, Gikonyo J** had this to say on issue of non- disclosure **“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”**.

10. In the case of ***The owners of motor vessel “Lillian S” vs. Caltex Oil Kenya limited (1989) 1 KLR 1***, the Court of Appeal stated as follows: **“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a “court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”**.

11. The applicant jumped the gun when he denied the trial court an opportunity to make an opinion as to whether it has jurisdiction or not. This court is not seized of the matters that are before the trial court and the latter court is the one which would have been better placed to determine whether it has jurisdiction or not in the first instance.

12. However, I am alive to the fact that the magistrate’s court has no jurisdiction to transfer cases to this court and hence in the event that the trial court was to deal with this issue all over again, and hold that it has no jurisdiction, another application would still have to be made to have the matter transferred to this court.

13. Thus I must look for a balance in line with provisions of article 159 (2) (d) of the constitution that **“Justice shall be administered without undue regard to procedural technicalities”**. To this end, this court will determine the issue of jurisdiction based on its own guidelines and not those initiated by the applicant. As earlier quoted in the **Priscilla Ndubi case (supra)**, I find it necessary to subject the valuation process to reverse osmosis in order to purify the streams of justice.

14. I therefore give directions that another valuation report be availed by the government valuer. The costs of such valuation to be met jointly by the parties herein. The respondents are also allowed to file their own independent report. The court will make a determination based on all the filed reports. This therefore constitutes an interim ruling geared to have a final decision on the matter.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17<sup>TH</sup> OCTOBER, 2018 IN THE PRESENCE OF:-**

C/A: Janet

Plaintiff/applicant

Ashaba holding brief for Kibet for applicant

Muchiri holding brief for Ashioya for respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**